

PART 10000—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

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AUTHORITY: 5 U.S.C. 552, as amended; E.O. 12600, 52 FR 23781, 3 CFR 1987, 1987 Comp., p. 235; 3 CFR 235.

SOURCE: 80 FR 49118, Aug. 17, 2015, unless otherwise noted.

§ 10000.1 Purpose and scope.

The regulations in this part implement the provisions of the FOIA.

§ 10000.2 Definitions.

The following definitions apply to this part:

Chairperson means the Chairperson of the Council, as appointed by the President, or any person to whom the Council has delegated authority for the matter concerned.

Chief FOIA Officer means the senior official to whom the Council delegated responsibility for efficient and appropriate compliance with the FOIA, currently delegated to the General Counsel.

Commercial use request means a FOIA request from or on behalf of a requester that seeks information for a use or purpose that furthers their commercial, trade, or profit interests, including pursuit of those interests through litigation.

Confidential business information means trade secrets or confidential or privileged commercial or financial information submitted to the Council by a person that may be protected from disclosure under Exemption 4 of the FOIA.

Council means the National Council on Disability, established by the Rehabilitation Act of 1973 (29 U.S.C. 780 *et seq.*), as amended, and amended by the

Workforce Innovation and Opportunity Act (Pub. L. 113-128) in 2014.

Direct costs are those expenses that an agency incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.*, the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. To fall within this fee category, the request must serve the scholarly research goals of the institution rather than an individual research goal.

(1) *Example 1.* A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

(2) *Example 2.* A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

(3) *Example 3.* A student who makes a request in furtherance of the completion of a course of instruction would be presumed to be carrying out an individual research goal, rather than a scholarly research goal of the institution and would not qualify as part of this fee category.

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Fee waiver means the waiver or reduction of fees if a requester can demonstrate meeting the statutory standard that the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

FOIA means the Freedom of Information Act, 5 U.S.C. 552, as amended. The FOIA applies to requests for agency records.

FOIA Officer means the individual to whom the Council has delegated authority to carry out the Council's day-to-day FOIA administration, currently delegated to the Council's Attorney Advisor.

FOIA Public Liaison means the individual designated by the Chairperson to assist FOIA requesters with concerns about the Council's processing of their FOIA request, including assistance in resolving disputes, currently delegated to the Council's Attorney Advisor.

Non-commercial scientific institution means an organization operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any product or research, and not operated on a commercial basis.

Person includes an individual, partnership, corporation, association, or public or private organization other than an agency.

Record means any writing, drawing, map, recording, diskette, DVD, CD-ROM, tape, film, photograph, or other documentary material, regardless of medium, by which information is preserved, including documentary material stored electronically.

Redact means delete or mark over.

Representative of the news media is any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of

news media entities include television or radio stations that broadcast "news" to the public at large and publishers of periodicals that disseminate "news" and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester's past publication record in making this determination.

Requester category means one of the three categories defined by the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Fee Guidelines) in which requesters will be placed for the purpose of determining what if any fees for search, review, or duplication may be assessed. They are:

- (1) Commercial requestors;
- (2) Non-commercial scientific or educational institutions or representatives of the news media; and
- (3) All other requestors.

Submitter means any person or entity from whom the Council obtains confidential or privileged business information, directly or indirectly.

Unusual circumstances exist when:

- (1) The need to search for and collect the requested records from physically separate facilities;
- (2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

§ 10000.3 Availability of records.

Records that are required by the FOIA to be made available for public